

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**Case No.: 3:21CR49-1, 2
(GROH)**

**JONATHAN TOEBBE, and
DIANA TOEBBE,**

Defendants.

INITIAL SCHEDULING ORDER ON ORIGINAL INDICTMENT

On October 20, 2021, came the United States of America by S. Derek Shugert and Jessica Lieber Smolar, Assistant United States Attorneys, and also came Defendant, JONATHAN TOEBBE, in person and by his counsel, Nicholas J. Compton, Assistant Federal Public Defender and also came Defendant, DIANA TOEBBE, by her counsel Edward B. MacMahon, Jr., Esq. and her local counsel, Barry P. Beck, Esq. for an initial appearance and arraignment in the above-styled criminal action. The Magistrate Judge, in open court, determined that Defendants each had received a copy of the original indictment. Both Defendants waived reading of the original indictment and each entered a not guilty plea to all charges. Accordingly, the Court sets the following disclosure, pre-trial and trial dates:

IT IS ORDERED THAT:

- (1) Pursuant to the Defendants' request, the United States Attorney shall provide Defendants' counsel with copies of pre-trial discovery and inspection on or before October 27, 2021.

Defendants shall provide reciprocal discovery pursuant to LRCrP 16.01(c) on or before November 3, 2021.

Any declination of disclosure, additional discovery or inspection and additional evidence shall be in accordance with LRCrP16.02, 16.03, and 16.04.

(2) Exculpatory evidence shall be disclosed on or before October 27, 2021.
LRCrP 16.05.

(3) All motions, including any motion for a bill of particulars pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure and LRCrP 47.01, shall be filed on or before November 10, 2021. All such motions shall contain or be accompanied by a memorandum or brief presented at the time of filing setting forth the reasons and legal support for granting such motion. If this memorandum or brief is not presented at the time of filing, the motion will be dismissed.

(4) Responses to all such motions with legal support or memorandum shall be filed on or before November 17, 2021.

(5) A hearing on all motions, if referred to the Magistrate Judge by the Court, shall be held by the Magistrate Judge on December 1, 2021, at 1:30 p.m. If any of the pre-trial motions require the taking of testimony, the party offering the testimony shall notify the Magistrate Judge's Chambers seven (7) days prior to the hearing to obtain a court reporter for the hearing. The defendants shall be present at the hearing on all pre-trial motions. The United States Marshals Service requires that subpoenas for witnesses be issued ten days prior to the date of the hearing in order for them to be able to serve them.

(6) Rule 404(b), Giglio, and Roviaro evidence shall be disclosed on or before November 22, 2021. LRCrP16.06.

(7) It is requested that the government disclose materials described in 18 U.S.C. § 3500 (Jencks Act material) on or before November 22, 2021.

(8) All proposed voir dire questions, motions in limine (which must be limited to matters actually in dispute) and proposed jury instructions shall be submitted by counsel to the Court and opposing counsel on or before November 24, 2021.

The proposed jury instructions will (1) contain the style of the case, (2) the name of the party submitting the jury instructions, (3) be separately and consecutively numbered, (4) state by title the subject matter of the instruction, and (5) include a recorded citation of authority in support of the proposed jury instruction.

Objections to opposing counsel's instructions of law are due in writing no later than the last working day before trial.

Counsel are required to provide to the court by email the voir dire and instructions in WordPerfect or Microsoft Word format. Please contact the Chief District Judge's Chambers for an email address prior to filing.

(9) By November 22, 2021, counsel for each party shall file with the United States Clerk's Office, Martinsburg Division and serve upon opposing counsel a list of probable witnesses and possible witnesses (identified as such), but not whether or not the Defendant shall be a witness. The list shall state the full name and address of each witness and shall also contain a brief statement of the subject matters to be covered by each witness. Expert witnesses and record custodians, shall be identified as such on the list. LRCrP16.07.

(10) By November 22, 2021, counsel for each party shall file with the United States Clerk's Office, Martinsburg Division and serve upon opposing counsel a list of exhibits to be offered at trial. In addition, counsel for each party shall number the listed exhibits with evidence tags which may be obtained from the Clerk and shall exchange a complete set of marked exhibits with opposing counsel (except for large or voluminous items or other exhibits that cannot be reproduced easily). LRCrP16.08. Further, each party shall deliver to the Clerk's Office a courtesy copy of their marked exhibits for the Court's review and preparation for trial. Each party shall retain the original exhibits, which are to be tendered to the Clerk at trial.

(11) If this matter results in the formulation of a plea agreement, counsel shall submit to the Court the executed plea agreement or an unexecuted final proposed agreement by November 30, 2021.

(12) A pre-trial conference in this case will be held on December 9, 2021, at 9:30 a.m., before the Honorable Gina M. Groh, to discuss all pending matters and to confirm the trial date.

(13) Jury selection in this matter will be conducted before the Court at the following time and place:

W. Craig Broadwater Federal Building and U.S. Courthouse
217 West King Street
Martinsburg, West Virginia 25401

Second Floor before Chief District Judge Groh

December 14, 2021, at 9:00 a.m.

(14) Trial will commence upon completion of jury selection in all cases scheduled for trial.

IF A PARTY DESIRES TO FILE A MOTION FOR A CONTINUANCE OF A

TRIAL OR ANY OTHER SCHEDULED EVENT, COUNSEL FOR THAT PARTY SHALL, PRIOR TO THE FILING OF ANY MOTION, MEET AND CONFER WITH OPPOSING COUNSEL AND AGREE UPON THREE NEW DATES SHOULD THE MOTION BE GRANTED AND THAT INFORMATION SHALL BE INCLUDED IN THE MOTION. IF COUNSEL FOR THE OPPOSING PARTY OBJECTS TO A CONTINUANCE, THAT FACT SHALL ALSO BE NOTED IN THE MOTION.

(15) Defendants shall appear at every scheduled matter including, but not limited to, motion hearing, pretrial conference, trial and every other proceeding. If incarcerated, the U.S. Marshal Service are directed to transport the Defendants.

(16) Defense counsel shall notify the Clerk of Court in writing at least a week in advance if the services of an interpreter are required for a hearing or trial.

IT IS FURTHER ORDERED that Defendants be **REMANDED** to the custody of the U.S. Marshals Service.

The Clerk of the Court is directed to provide a copy of this Order to parties who appear pro se and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: 10-20-2021



ROBERT W. TRUMBLE
UNITED STATES MAGISTRATE JUDGE